

STATE OF MICHIGAN
COURT OF APPEALS

JIMMY CULLORS,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED

May 17, 2005

No. 252295

Wayne Circuit Court

LC No. 02-226849-CK

Before: Murphy, P.J., and White and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's order granting summary disposition for defendant on rehearing. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's truck began rolling down a hill, and he gave chase. During the chase plaintiff stepped in a pothole and fell to the ground, sustaining an ankle injury. When defendant refused to pay plaintiff personal injury protection (PIP) benefits, plaintiff filed suit seeking those benefits. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that plaintiff's claim failed as a matter of law because it did not arise out of the ownership, operation, maintenance, or use of a vehicle as a motor vehicle. MCL 500.3105(1). Initially, the trial court denied the motion; however, on rehearing, the trial court adopted defendant's reasoning and granted summary disposition.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

An insurer is obligated to pay PIP benefits for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. MCL 500.3105(1). For an injury to arise out of the operation or use of a motor vehicle as a motor vehicle, the injury must occur as the result of more than an incidental or fortuitous involvement of a vehicle. Rather, the injury must be closely related to the vehicle's function as a means of

transportation. *Morosini v Citizens Ins Co (After Remand)*, 461 Mich 303, 309-310; 602 NW2d 828 (1999).

It is undisputed that plaintiff's truck was moving at the time he was injured.¹ Plaintiff pursued his truck after it began moving and injured his ankle when he stepped in a pothole. Plaintiff's injury was not closely related to his truck's function as a means of transportation. *Morosini, supra*. Only an incidental or fortuitous connection existed between plaintiff's injury and his vehicle. Such an injury is not foreseeably identifiable with the normal use of a vehicle as a motor vehicle. *Keller v Citizens Ins Co*, 199 Mich App 714, 715; 502 NW2d 329 (1993). Therefore, summary disposition was appropriate.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Michael R. Smolenski

¹ We reject plaintiff's contention that the parked vehicle exclusion, MCL 500.3106, somehow alters this result. A vehicle is "parked if its wheels cannot move," and the vehicle in question was admittedly moving. *Amy v MIC Gen Ins Corp*, 258 Mich App 94, 123; 670 NW2d 228 (2003), rev'd not in relevant part *Stewart v State*, 471 Mich 692; 692 NW2d 376 (2004). Furthermore, even under the parked vehicle exclusion, an "injury must arise from that use of the parked vehicle that characterizes its function as a motor vehicle." *Id.* at 124. The injury in this case simply cannot be characterized as arising out of the use of the vehicle as a motor vehicle.